

STATEMENT OF REASONED JUSTIFICATION FOR MODIFICATION OF THE RULE

DEPARTMENT OF TAXATION AND FINANCE

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 6, 2010, issue of the *State Register* summaries of rules that were adopted by the Commissioner of Taxation and Finance in 2000 and 2005, as notice of the department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. On December 31, 2009, this information was also posted on the department's web site (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>). The public was invited to submit comments concerning the continuation or modification of these rules by February 22, 2010.

No public comments were received by the department concerning the 2005 amendments to 20 NYCRR Sections 171.4(b)(1) (Supplemental wages), 251.1(b) (Supplemental wages, City of Yonkers), and 291.1(b) (Supplemental wages, City of New York); and Appendixes 10, 10-A, and 10-C. The 2005 rule provided revised New York State, City of Yonkers, and City of New York withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2006. The 2005 rule also reflected a decrease in the New York State and City of New York supplemental withholding rates applied to supplemental payments and an increase in that rate for the City of Yonkers. The amendments were adopted by the commissioner on November 22, 2005 and published in the *State Register* on December 7, 2005, (TAF-40-05-00024-A).

Subsequent changes in the underlying provisions of the Tax Law, Code of the City of Yonkers, and Administrative Code of the City of New York have resulted in several changes to the withholding tables and other methods.

Section 5 of Part Z-1 of Chapter 57 of the Laws of 2009 required the Commissioner to adopt rules to implement changes in the withholding tax tables and other methods relating to the New York State income tax

rate changes made by Part Z-1. The 2009 amendments to Appendixes 10 and 10-A relating to the exact calculation method (Method II) for New York State income tax withholding purposes and for City of Yonkers income tax surcharge purposes revised the withholding tables and methods as required by Chapter 57. Amendments to Sections 171.4(b) (1) and 251.1(b) regarding withholding on supplemental wages were also included in the adopted rules to reflect the new rate of withholding. Because Chapter 57 required that the withholding rates for the remainder of tax year 2009 reflect the full amount of tax liability for 2009 as accurately as possible, it was necessary to propose and adopt the amendments for tax year 2009 as an emergency rule on April 15, 2009, and adopt them as a permanent rule on June 23, 2009. On November 18, 2009, the commissioner adopted amendments to Appendixes 10 and 10-A providing the withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2010.

Appendix 10-A was subsequently repealed and new Appendix 10-A was added to provide new City of Yonkers withholding tables and other methods adopted by an emergency rule on March 28, 2011, and permanently adopted on June 1, 2011. The new tables and other methods reflected amendments to the Code of the City of Yonkers enacted by Local Law No. 3-2011 that increased the rate of the city income tax surcharge effective January 1, 2011. Section 251.1 was also amended to reflect the new City of Yonkers supplemental withholding tax rate. The Yonkers withholding tax tables and other methods apply to wages and other compensation subject to withholding paid on or after May 1, 2011 and reflect the full amount of liability for 2011 applied to an 8-month period.

The current rule repeals Appendixes 10 and 10-A and adds new Appendixes 10 and 10-A to provide New York State and City of Yonkers withholding tables and other methods, applicable to wages and other compensation paid on or after January 1, 2012. This rule sets forth amendments reflecting the revision of New York State personal income tax rates contained in Chapter 57 of the Laws of 2009, and the new City of Yonkers income tax surcharge rate pursuant to section 15-111 of the Code of the City of Yonkers as amended by City of

Yonkers Local Law 3-2011. Part Z-1 of Chapter 57 directed the return to the highest New York State personal income tax rate of 6.85 per cent in effect for tax years beginning before 2009 for tax years beginning on or after January 1, 2012. The authority contained in Tax Law section 1321 allowing the City of Yonkers to impose its income tax surcharge set to expire December 31, 2011, was extended by Chapter 255 of the Laws of 2011. Subsequently, City of Yonkers Local Law No. 9-2011 amended the Code of the City of Yonkers to extend the City of Yonkers resident income tax surcharge and non-resident earnings tax to taxable years ending on or before December 31, 2013.

Section 4 of Part EE of Chapter 57 of the Laws of 2010 required the Commissioner to adopt rules to implement changes in the New York City withholding tax tables and other methods relating to the income tax rate changes made by Part EE, effective January 1, 2010. The amendments to Appendix 10-C related to the exact calculation method (Method II) for New York City personal income tax on residents for withholding purposes, revising the withholding tables and methods as required by Chapter 57 of the Laws of 2010. Amendments to Section 291.1(b) regarding withholding on New York City supplemental wages were also included in the adopted rules to reflect the new rate of withholding. Because Chapter 57 required that the withholding rates for the remainder of tax year 2010 reflect the full amount of tax liability for 2010 as accurately as possible, as it was necessary to propose and adopt the amendments for tax year 2010 as an emergency rule on August 17, 2010, and adopt them as a permanent rule on October 22, 2010. On November 18, 2010, the commissioner adopted amendments to Appendix 10-C providing the New York City withholding tables and methods applicable to wages and other compensation paid on or after January 1, 2011.

In light of the various statutory changes since 2005, the 2005 rule that revised New York State, City of Yonkers, and City of New York withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2006 has been revised several times. As a result of the current rule amending the State and City of Yonkers rules, all of these rules concerning the withholding tables and other

methods will be current as applied to taxable years beginning on or after January 1, 2012. The 2005 amendments relating to the State and City of Yonkers withholding tables will be completely replaced by this rule so that these provisions of the 2005 rule will no longer be subject to review. The remaining provisions of the 2005 rule relating to New York City will be subject to review, along with the amendments made in 2010, in 2015.